

Remarks

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 32, and 36 - 45 are pending in the application, with 32 being the independent claim. Claims 33 - 35 are sought to be cancelled without prejudice to or disclaimer of the subject matter therein. Support for the amendment to claim 32 can be found in the specification at page 7, lines 19 - 24 and page 9, lines 21 - 29. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Based on the above amendment and the following remarks, Applicant(s) respectfully request(s) that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

I. Rejections under 35 U.S.C. § 112

The Examiner rejected claims 32 - 45 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Applicants respectfully traverse this rejection.

Specifically, the Examiner is of the opinion that it is unclear in step (d) of claim 32 whether the organic acid ester is in the insolubles removed or is in material remaining after removing insolubles. In addition, the Examiner points out that there is no clear antecedent basis for "the free organic acid" in step (c) of claim 32. Applicants have amended claim 32 to specify that the organic acid ester is in the solution after removal of insolubles as well as to provide clear antecedent basis for "the free organic acid." Applicants respectfully submit that the rejection of claims 32 - 45 under 35 U.S.C. § 112, second paragraph has been overcome by amendment and should be withdrawn.

II. Rejections under 35 U.S.C. § 103

The Examiner rejected claims 32 - 45 under 35 U.S.C. § 103(a) as being unpatentable over Dumpelmann *et al.* (U.S. Patent No. 5,852,211) in view of Bott *et al.* (EP 0 174 624). Applicants respectfully traverse this rejection. However, in the interest of advancing the prosecution of the application, Applicants have amended claim 32 to exclude the removal of insolubles prior to the drying of the fermentation broth. Applicants have also cancelled claims 33 - 35 which relate to the removal of insolubles prior to the drying step. Dumpelmann *et al.* does not teach the drying of the fermentation broth without prior removal of insolubles from the fermentation broth. The deficiency in Dumpelmann is not cured by Bott *et al.*, which teaches a process involving filtering the fermentation broth while hot. Dumpelmann *et al.* in combination with Bott *et al.* does

not teach the drying of the fermentation broth without prior removal of insolubles from the fermentation broth.

The Examiner is of the opinion that it would have been obvious to omit crystallizing NaKGA in the process of Dumpelmann *et al.* and instead dry the fermentation broth and react the dried broth with the lower alcohol in the presence of acid as taught by Bott *et al.* The Examiner is also of the opinion that while the process of Bott *et al.* filters the fermentation broth before drying, it would have been obvious to omit filtering to further simplify. Applicants respectfully disagree.

Applicants submit herewith the Declaration of Kevin M. Moore, which was submitted previously in the parent application (U.S. Application No. 09/631,638). As shown in the Declaration, one of ordinary skill in the art would have no reasonable expectation of success in obtaining the desired products by drying a whole fermentation broth. Neither Dumpelmann nor Bott teach not filtering prior to drying the fermentation broth. Bott *et al.* teaches away from omitting the filtering step for reasons stated in the Declaration of Kevin M. Moore. Therefore, it would not have been obvious to omit filtering prior to drying the fermentation broth merely to simplify the process as the Examiner suggests.

If necessary, Applicants request that the Examiner evaluate evidence of secondary considerations in determining obviousness. Bott *et al.* was published in 1986, with a priority dating back to 1984. There is about a thirteen-year time period between the publication of Bott *et al.* and the priority filing of the present application in 1999.

The Examiner is of the opinion that it would have been obvious to omit filtering prior to drying the fermentation broth to further simplify. However, in the long period of time between the publication of Bott *et al.* and the first filing of the present application, there has been no evidence showing that such a simplification of the Bott *et al.* process was achieved (see Declaration of Kevin M. Moore). Thus, in accordance with the Examiner's reasoning, there has been a long-felt need to simplify the process of Bott *et al.* that was without solution. It is only in the present invention that omitting the filtering step prior to drying of the fermentation broth is achieved, thereby providing a simplified process. The long-felt need and the failure of others to satisfy that need are evidence of the nonobviousness of the present invention.

Applicants submit that the rejection of claims 32 - 45 under 35 U.S.C. § 103(a) as being unpatentable over Dumpelmann *et al.* (U.S. Patent No. 5,852,211) in view of Bott *et al.* (EP 0 174 624) has been overcome and should be withdrawn.

Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicant(s) therefore respectfully request(s) that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicant(s) believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for

allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

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Date: November 24, 2003

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